

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

HENRY HOWARD; HELEN DIALS;)
EMMIT AND CAROLYN RODGERS;)
CHRISTINE SPARKS; JAMES AND)
PEGGY MORRIS; AND MELVIN)
AND BARBARA McCOMBS)
)
Plaintiffs,)
v.) **CASE NUMBER: 07-550**
)
AMERIQUEST MORTGAGE COMPANY,)
)
Defendant.)
)
 COMPLAINT

NOW COME the Plaintiffs and as their Complaint against Defendant Ameriquest Mortgage Company aver as follows:

JURISDICTION

This action includes claims which arise under the statutes of the United States and this Court's jurisdiction is conferred by 28 U.S.C. § 1331.

SUMMARY OF CLAIMS

These claims arise from real estate loan transactions resulting in mortgages upon Plaintiffs' homes, all of which are located in this district. Each of the Plaintiffs asserts claims against Defendant Ameriquest Mortgage Company ("AMC") arising under the federal Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 et seq. All of the Plaintiffs' claims arise from the same general conduct, seek the same relief, rely upon the same legal theories, require application of the same legal principals and require the same or similar factual determinations. Each of the Plaintiffs alleges that AMC, the originator of each of the Plaintiffs' loans, failed to make accurate disclosures as required under TILA. Specifically, AMC failed to provide adequate notice of Plaintiffs' statutory right to cancel the transactions. As a consequence of the failure to provide adequate notice of the right to cancel, each Plaintiff has retained his or her right to cancel the transaction. Each Plaintiff has

exercised that right by delivering written notice of his or her election to cancel in accordance with the requirements of TILA. As to each of the Plaintiffs, AMC has wrongfully failed to recognize the rescission and failed to comply with its other TILA obligations with respect to Plaintiffs' loan cancellations. Each Plaintiff seeks a court determination that his or her loan transaction has been rescinded. Plaintiffs also seek statutory and actual damages for violations of TILA, plus attorney's fees and costs.

THE PARTIES

1. Plaintiffs are all of full age of majority and reside in this district.
2. Ameriquest Mortgage Company ("AMC") is a California corporation with its principal place of business at Orange, California. At all relevant times, AMC was engaged in the making, holding and/or selling of federally related residential mortgage loans. AMC does business in this district by making, holding and/or selling mortgage loans secured by residential real property within this district.

FACTS

Applicable Truth In Lending Act Requirements

3. Each of the Plaintiffs' loans is subject to the federal Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, ("TILA") and its implementing regulations, 12 C.F.R. Part 226 ("Reg. Z"). TILA grants a consumer a three-day right to cancel certain types of real estate loan transactions. This three-day right to cancel applies to each of the Plaintiffs' loans.

4. Pursuant to 15 U.S.C. § 1635(a), the three-day cancellation period begins upon the later of the following events: (1) the "consummation of the transaction;" (2) the "delivery of the information and rescission forms" required by that section; or (3) delivery of accurate "material disclosures" required by TILA. 15 U.S.C. § 1635(a). Section 1635(a) requires that each borrower receive two (2) copies of *completed* notices specifying the precise day upon which the cancellation period expires. 12 C.F.R. § 226.23(b)(1). This notice is required to be on a separate piece of paper and it must contain the date the rescission period ends. 12 C.F.R. § 226.23(b)(1). If the required

notice of cancellation is not provided, then the right to cancel extends up to three years after the date of the loan. 15 U.S.C. § 1635(f). If a consumer has the right to rescind against a creditor, the right will also apply to any assignees of that creditor. 15 U.S.C. § 1641(c).

5. A consumer may exercise his right to cancel a transaction by delivery of a written notification of the consumer's election to cancel the transaction to the creditor's place of business. Notice is effective upon mailing and notice on the agent servicing the loan is effective notice on the holder of the mortgage. 12 C.F.R. § 226.23(a)(2).

6. When a consumer rescinds a transaction, the security interest giving rise to the right of rescission immediately becomes void and the consumer is not liable for any amount, including any finance charge. 15 U.S.C. § 1635(b).

7. Within twenty (20) days after the receipt of a consumer's election to cancel the transaction, the creditor must return to the consumer all money or property given, including all interest and finance charges paid, and shall take all action necessary or appropriate to reflect the termination of any security interest created under the transaction. 15 U.S.C. § 1635(b), 12 C.F.R. § 226.23(d). Upon and after performance of the creditor's aforementioned obligations under 15 U.S.C. § 1635(b), including the voiding of the security interest and return to the borrower of all money received by the borrower, the borrower may have an obligation to tender the loan proceeds to creditor, to the extent practicable or equitable.

8. As to each of the Plaintiffs' loans AMC failed to provide the required notices of the Plaintiffs' right to cancel the loan. The form notices that were supplied to Plaintiffs were blank, unsigned and not dated. At no point at or after closing were Plaintiffs provided a completed, dated or signed notice of their right to cancel the transaction.

9. With respect to each of the Plaintiffs' loan, AMC included in its closing papers a document purporting to grant a "One-Week Cancellation Period." That "notice" is inherently inconsistent with the required notice and with the statutory cancellation period provided by TILA. The "One-Week" "notice" is confusing , has the effect of obscuring the borrower's actual statutory

rights and violates the requirements of TILA. That notice was also delivered unsigned.

10. Pursuant to TILA, Section 15 U.S.C. 1635, Plaintiffs have retained a right to rescind their mortgage with respect to their loan with AMC.

11. Each of the Plaintiffs have exercised their right to cancel the transaction and have notified AMC of their election to cancel as required by 15 U.S.C. § 1635. As to each of the Plaintiffs, AMC has failed to take steps necessary or appropriate to reflect the termination of the security interest created in connection with Plaintiffs' loan.

12. AMC is a "creditor" as that term is defined at 15 U.S.C. 1602(f).

The Howard Loan

13. Plaintiff Henry Howard is an adult resident of Mobile County, Alabama and at all material times resided at 2052 Victory Court in Mobile, Alabama.

14. On or about April 27, 2005, Mr. Howard obtained a residential real estate mortgage loan with AMC. The total amount of the loan was \$66,600 and was secured by a mortgage security interest in Plaintiff's home. (This loan is hereinafter referred to as the "Howard Loan").

15. AMC failed to provide the required notices of the Plaintiff's right to cancel his loan. The form notices that were supplied to the Plaintiff were blank, unsigned and not dated. At no point at or after closing was the Plaintiff provided a completed, dated or signed notice of his right to cancel the transaction.

16. With respect to the Howard Loan, AMC included in its closing papers a document purporting to grant a "One-Week Cancellation Period." That "notice" is inherently inconsistent with the required notice and with the statutory cancellation period provided by TILA. The "One-Week" "notice" is confusing, has the effect of obscuring the borrower's actual statutory rights and violates the requirements of TILA. That notice was also delivered unsigned and undated.

17. As a result of AMC's failure to provide the notices and disclosures required by TILA, Ms Howard retained her right to cancel the transaction.

18. By letter dated July 5, 2007, Plaintiff, through his attorney, notified AMC of his election to rescind the loan.

19. Despite having received notice of Plaintiff's election to cancel the transaction, Defendant has failed to take any steps necessary or appropriate to reflect the termination of the security interest created in connection with Plaintiff's loan. The failure to take such steps is a violation of TILA Section 1635(b) and contrary to that provision's clear edict stating that said security interest is void upon delivery of the notice of the election to cancel.

20. AMC, prior to the delivery of the notice of Plaintiff's election to cancel, retained a security interest in real estate which is used by Plaintiff as his principal dwelling.

COUNT I
TILA Violations - Howard

21. Plaintiff realleges all the preceding allegations referenced as if set out here in full.

22. Plaintiff has properly and effectively cancelled and rescinded the Howard Loan in accordance with the rights and procedure set out in 15 U.S.C. § 1635.

23. Defendant has violated TILA, with respect to the Howard Loan, in at least the following ways:

(A) By failing to take actions after rescission as required by 15 U.S.C. § 1635(b), including the steps necessary or appropriate to reflect the termination of the security interest and returning all money paid by Plaintiff in connection with the loan; and

(B) By failing to give proper notice of Plaintiff's right to cancel the transaction.

WHEREFORE, Plaintiff Henry Howard respectfully requests that this Court enter judgment against AMC and in his favor, and pursuant to 15 U.S.C. § 1640(a), award the following relief:

- A) Statutory damages as provided in 15 U.S.C. § 1640(a);
- B) Actual damages in an amount to be determined at trial;
- C) Rescission of the Howard Loan, including a declaration that Plaintiff is not liable for any finance charges or other charges imposed;

- D) A declaration that the security interest in Plaintiff's property created under the mortgage transaction is void, and an order requiring AMC to release such security interest;
- E) Return of any money or property given by the Plaintiff to anyone, including the Defendants, in connection with the transaction;
- F) A declaration that Plaintiff has no duty to tender the loan proceeds to AMC, but in the alternative, if tender is required, a determination of the amount of tender obligation in light of all of the Plaintiff's claims, and an order requiring the AMC to accept tender on reasonable terms and over a reasonable period of time;
- G) An award of reasonable attorney fees and costs; and
- H) Such other relief at law or equity as this Court may deem just and proper.

The Dials Loan

24. Plaintiff Helen Dials is an adult resident of Mobile County, Alabama and at all material times resided at 503 La Rose Drive in Mobile, Alabama.

25. On or about September 21, 2005, Ms. Dials obtained a residential real estate mortgage loan with AMC. The total amount of the loan was \$80,706 and was secured by a mortgage security interest in Plaintiff's home. (This loan is hereinafter referred to as the "Dials Loan").

26. AMC failed to provide the required notices of the Plaintiff's right to cancel her loan. The form notices that were supplied to the Plaintiff were blank, unsigned and not dated. At no point at or after closing was the Plaintiff provided a completed, dated or signed notice of her right to cancel the transaction.

27. With respect to the Dials Loan, AMC included in its closing papers a document purporting to grant a "One-Week Cancellation Period." That "notice" is inherently inconsistent with the required notice and with the statutory cancellation period provided by TILA. The "One-Week" "notice" is confusing, has the effect of obscuring the borrower's actual statutory rights and violates the requirements of TILA. That notice was also delivered unsigned and undated.

28. As a result of AMC's failure to provide the notices and disclosures required by TILA, Ms Dials retained her right to cancel the transaction.

29. By letter dated July 5, 2007, Plaintiff, through her attorney, notified AMC of her election to rescind the loan.

30. Despite having received notice of Plaintiff's election to cancel the transaction, Defendant has failed to take any steps necessary or appropriate to reflect the termination of the security interest created in connection with Plaintiff's loan. The failure to take such steps is a violation of TILA Section 1635(b) and contrary to that provision's clear edict stating that said security interest is void upon delivery of the notice of the election to cancel.

31. AMC, prior to the delivery of the notice of Plaintiff's election to cancel, retained a security interest in real estate which is used by Plaintiff as her principal dwelling.

COUNT II
TILA Violations - Dials

32. Plaintiff realleges all the preceding allegations referenced as if set out here in full.

33. Plaintiff has properly and effectively cancelled and rescinded the Dials Loan in accordance with the rights and procedure set out in 15 U.S.C. § 1635.

34. Defendant has violated TILA, with respect to the Dials Loan, in at least the following ways:

(A) By failing to take actions after rescission as required by 15 U.S.C. § 1635(b), including the steps necessary or appropriate to reflect the termination of the security interest and returning all money paid by Plaintiff in connection with the loan; and

(B) By failing to give proper notice of Plaintiff's right to cancel the transaction.

WHEREFORE, Plaintiff Helen Dials respectfully requests that this Court enter judgment against AMC and in her favor, and pursuant to 15 U.S.C. § 1640(a), award the following relief:

- A) Statutory damages as provided in 15 U.S.C. § 1640(a);
- B) Actual damages in an amount to be determined at trial;

- C) Rescission of the Dials Loan, including a declaration that Plaintiff is not liable for any finance charges or other charges imposed;
- D) A declaration that the security interest in Plaintiff's property created under the mortgage transaction is void, and an order requiring AMC to release such security interest;
- E) Return of any money or property given by the Plaintiff to anyone, including the Defendants, in connection with the transaction;
- F) A declaration that Plaintiff has no duty to tender the loan proceeds to AMC, but in the alternative, if tender is required, a determination of the amount of tender obligation in light of all of the Plaintiff's claims, and an order requiring the AMC to accept tender on reasonable terms and over a reasonable period of time;
- G) An award of reasonable attorney fees and costs; and
- H) Such other relief at law or equity as this Court may deem just and proper.

The Rogers Loan

35. Plaintiffs Emmit and Carolyn Rogers are married and, at all material times, resided at 5508 Racine Avenue in Mobile, Alabama.

36. On or about June 15, 2005, Mr. and Mrs. Rogers obtained a residential real estate mortgage loan with AMC. The total amount of the loan was \$90,000 and was secured by a mortgage security interest in Plaintiffs' home. (This loan is hereinafter referred to as the "Rogers Loan").

37. AMC failed to provide the required notices of the Plaintiffs' right to cancel the Rogers loan. The form notices that were supplied to Plaintiffs were blank, unsigned and not dated. At no point at or after closing were Plaintiffs provided a completed, dated or signed notice of their right to cancel the transaction.

38. With respect to the Rogers loan, AMC included in its closing papers a document purporting to grant a "One-Week Cancellation Period." That "notice" is inherently inconsistent with

the required notice and with the statutory cancellation period provided by TILA. The "One-Week" "notice" is confusing, has the effect of obscuring the borrower's actual statutory rights and violates the requirements of TILA. That notice was also delivered unsigned and undated.

39. As a result of AMC's failure to provide the notices and disclosures required by TILA, Plaintiffs Emmit and Carolyn Rogers retained their right to cancel the transaction.

40. By letter dated July 2, 2007, Plaintiffs, through their attorney, notified AMC of their election to rescind the loan.

41. Despite having received notice of Plaintiffs' election to cancel the transaction, Defendant has failed to take any steps necessary or appropriate to reflect the termination of the security interest created in connection with Plaintiffs' loan. The failure to take such steps is a violation of TILA Section 1635(b) and contrary to that provision's clear edict stating that said security interest is void upon delivery of the notice of the election to cancel.

42. AMC, prior to the delivery of the notice of Plaintiffs' election to cancel, retained a security interest in real estate which is used by Plaintiffs as their principal dwelling.

COUNT III
TILA Violations - Rogers

43. Plaintiffs reallege all the preceding allegations referenced as if set out here in full.

44. Plaintiffs have properly and effectively cancelled and rescinded the loan in accordance with the rights and procedure set out in 15 U.S.C. § 1635.

45. Defendant has violated TILA, with respect to the Rogers Loan, in at least the following ways:

- (A) By failing to take actions after rescission as required by 15 U.S.C. § 1635(b), including the steps necessary or appropriate to reflect the termination of the security interest and returning all money paid by Plaintiffs in connection with the loan; and
- (B) By failing to give proper notice of Plaintiffs' right to cancel the transaction.

WHEREFORE, Plaintiffs Emmit and Carolyn Rogers respectfully request that this Court

enter judgment against AMC and in their favor, and pursuant to 15 U.S.C. § 1640(a), award the following relief:

- A) Statutory damages as provided in 15 U.S.C. § 1640(a);
- B) Actual damages in an amount to be determined at trial;
- C) Rescission of the Rogers Loan, including a declaration that Plaintiffs are not liable for any finance charges or other charges imposed;
- D) A declaration that the security interest in Plaintiffs' property created under the mortgage transaction is void, and an order requiring AMC to release such security interest;
- E) Return of any money or property given by the Plaintiffs to anyone, including the Defendants, in connection with the transaction;
- F) A declaration that Plaintiffs have no duty to tender the loan proceeds to AMC, but in the alternative, if tender is required, a determination of the amount of tender obligation in light of all of the Plaintiffs' claims, and an order requiring the AMC to accept tender on reasonable terms and over a reasonable period of time;
- G) An award of reasonable attorney fees and costs; and
- H) Such other relief at law or equity as this Court may deem just and proper.

The Sparks Loan

46. Plaintiff Christine Sparks is an adult resident of Mobile County and, at all material times, resided at 254 Tuttle Avenue in Mobile, Alabama.

47. On or about June 21, 2005, Ms. Sparks obtained a residential real estate mortgage loan with AMC. The total amount of the loan was \$60,000 and was secured by a mortgage security interest in Plaintiff's home. (This loan is hereinafter referred to as the "Sparks Loan").

48. AMC failed to provide the required notices of the Plaintiff's right to cancel the Sparks loan. The form notices that were supplied to Ms Sparks were blank, unsigned and not dated. At no point at or after closing was Ms Sparks provided a completed, dated or signed notice of her right to

cancel the transaction.

49. With respect to the Sparks Loan, AMC included in its closing papers a document purporting to grant a "One-Week Cancellation Period." That "notice" is inherently inconsistent with the required notice and with the statutory cancellation period provided by TILA. The "One-Week" "notice" is confusing, has the effect of obscuring the borrower's actual statutory rights and violates the requirements of TILA. That notice was also delivered unsigned and undated.

50. As a result of AMC's failure to provide the notices and disclosures required by TILA, Ms Sparks retained her right to cancel the transaction.

51. By letter dated July 18, 2007, Plaintiff, through her attorney, notified AMC of her election to rescind the loan.

52. Despite having received notice of Plaintiff's election to cancel the transaction, Defendant has failed to take any steps necessary or appropriate to reflect the termination of the security interest created in connection with Plaintiff's loan. The failure to take such steps is a violation of TILA Section 1635(b) and contrary to that provision's clear edict stating that said security interest is void upon delivery of the notice of the election to cancel.

53. AMC, prior to the delivery of the notice of Plaintiff's election to cancel, retained a security interest in real estate which is used by Plaintiff as her principal dwelling.

COUNT IV
TILA Violations - Sparks

54. Plaintiff realleges all the preceding allegations referenced as if set out here in full.

55. Plaintiff Christine Sparks has properly and effectively cancelled and rescinded the Sparks Loan in accordance with the rights and procedure set out in 15 U.S.C. § 1635.

56. Defendant has violated TILA, with respect to the Sparks Loan, in at least the following ways:

- (A) By failing to take actions after rescission as required by 15 U.S.C. § 1635(b), including the steps necessary or appropriate to reflect the termination of the security interest and returning all money paid by Plaintiff in connection with

the loan; and

- (B) By failing to give proper notice of Plaintiff's right to cancel the transaction.

WHEREFORE, Plaintiff Christine Sparks respectfully request that this Court enter judgment against AMC and in her favor, and pursuant to 15 U.S.C. § 1640(a), award the following relief:

- A) Statutory damages as provided in 15 U.S.C. § 1640(a);
- B) Actual damages in an amount to be determined at trial;
- C) Rescission of the Sparks Loan, including a declaration that Plaintiff is not liable for any finance charges or other charges imposed;
- D) A declaration that the security interest in Plaintiff's property created under the mortgage transaction is void, and an order requiring AMC to release such security interest;
- E) Return of any money or property given by the Plaintiff to anyone, including the Defendants, in connection with the transaction;
- F) A declaration that Plaintiff has no duty to tender the loan proceeds to AMC, but in the alternative, if tender is required, a determination of the amount of tender obligation in light of all of the Plaintiff's claims, and an order requiring the AMC to accept tender on reasonable terms and over a reasonable period of time;
- G) An award of reasonable attorney fees and costs; and
- H) Such other relief at law or equity as this Court may deem just and proper.

The Morris Loan

57. Plaintiffs James and Peggy Morris are married and, at all material times, resided at 716 Florida Street Extension in Mobile, Alabama.

58. On or about August 20, 2004, Mr. and Mrs. Morris obtained a residential real estate mortgage loan with AMC. The total amount of the loan was \$76,500 and was secured by a mortgage security interest in Plaintiffs' home. (This loan is hereinafter referred to as the "Morris Loan").

59. AMC failed to provide the required notices of the Plaintiffs' right to cancel the Morris

loan. The form notices that were supplied to Plaintiffs were blank, unsigned and not dated. At no point at or after closing were Plaintiffs provided a completed, dated or signed notice of their right to cancel the transaction.

60. With respect to the Morris loan, AMC included in its closing papers a document purporting to grant a "One-Week Cancellation Period." That "notice" is inherently inconsistent with the required notice and with the statutory cancellation period provided by TILA. The "One-Week" "notice" is confusing, has the effect of obscuring the borrower's actual statutory rights and violates the requirements of TILA. That notice was also delivered unsigned and undated.

61. As a result of AMC's failure to provide the notices and disclosures required by TILA, Plaintiffs James and Peggy Morris retained their right to cancel the transaction.

62. By letter dated July 5, 2007, Plaintiffs, through their attorney, notified AMC of their election to rescind the loan.

63. Despite having received notice of Plaintiffs' election to cancel the transaction, Defendant has failed to take any steps necessary or appropriate to reflect the termination of the security interest created in connection with Plaintiffs' loan. The failure to take such steps is a violation of TILA Section 1635(b) and contrary to that provision's clear edict stating that said security interest is void upon delivery of the notice of the election to cancel.

64. AMC, prior to the delivery of the notice of Plaintiffs' election to cancel, retained a security interest in real estate which is used by Plaintiffs as their principal dwelling.

COUNT V
TILA Violations - Morris

65. Plaintiffs reallege all the preceding allegations referenced as if set out here in full.

66. Plaintiffs have properly and effectively cancelled and rescinded the loan in accordance with the rights and procedure set out in 15 U.S.C. § 1635.

67. Defendant has violated TILA, with respect to the Morris Loan, in at least the following ways:

(A) By failing to take actions after rescission as required by 15 U.S.C. § 1635(b),

including the steps necessary or appropriate to reflect the termination of the security interest and returning all money paid by Plaintiffs in connection with the loan; and

(B) By failing to give proper notice of Plaintiffs' right to cancel the transaction.

WHEREFORE, Plaintiffs James and Peggy Morris respectfully request that this Court enter judgment against AMC and in their favor, and pursuant to 15 U.S.C. § 1640(a), award the following relief:

- A) Statutory damages as provided in 15 U.S.C. § 1640(a);
- B) Actual damages in an amount to be determined at trial;
- C) Rescission of the Morris Loan, including a declaration that Plaintiffs are not liable for any finance charges or other charges imposed;
- D) A declaration that the security interest in Plaintiffs' property created under the mortgage transaction is void, and an order requiring AMC to release such security interest;
- E) Return of any money or property given by the Plaintiffs to anyone, including the Defendants, in connection with the transaction;
- F) A declaration that Plaintiffs have no duty to tender the loan proceeds to AMC, but in the alternative, if tender is required, a determination of the amount of tender obligation in light of all of the Plaintiffs' claims, and an order requiring the AMC to accept tender on reasonable terms and over a reasonable period of time;
- G) An award of reasonable attorney fees and costs; and
- H) Such other relief at law or equity as this Court may deem just and proper.

The McCombs Loan

68. Plaintiffs Melvin and Barbara McCombs are married and, at all material times, resided at 4153 Shan Drive East in Mobile, Alabama.

69. On or about December 30, 2004, Mr. and Mrs. McCombs obtained a residential real

estate mortgage loan with AMC. The total amount of the loan was \$80,000 and was secured by a mortgage security interest in Plaintiffs' home. (This loan is hereinafter referred to as the "McCombs Loan").

70. AMC failed to provide the required notices of the Plaintiffs' right to cancel the McCombs loan. The form notices that were supplied to Plaintiffs were blank, unsigned and not dated. At no point at or after closing were Plaintiffs provided a completed, dated or signed notice of their right to cancel the transaction.

71. With respect to the McCombs loan, AMC included in its closing papers a document purporting to grant a "One-Week Cancellation Period." That "notice" is inherently inconsistent with the required notice and with the statutory cancellation period provided by TILA. The "One-Week" "notice" is confusing , has the effect of obscuring the borrower's actual statutory rights and violates the requirements of TILA. That notice was also delivered unsigned and undated.

72. As a result of AMC's failure to provide the notices and disclosures required by TILA, Plaintiffs Melvin and Barbara McCombs retained their right to cancel the transaction.

73. By letter dated July 17, 2007, Plaintiffs, through their attorney, notified AMC of their election to rescind the loan.

74. Despite having received notice of Plaintiffs' election to cancel the transaction, Defendant has failed to take any steps necessary or appropriate to reflect the termination of the security interest created in connection with Plaintiffs' loan. The failure to take such steps is a violation of TILA Section 1635(b) and contrary to that provision's clear edict stating that said security interest is void upon delivery of the notice of the election to cancel.

75. AMC, prior to the delivery of the notice of Plaintiffs' election to cancel, retained a security interest in real estate which is used by Plaintiffs as their principal dwelling.

COUNT VI
TILA Violations - McCombs

76. Plaintiffs reallege all the preceding allegations referenced as if set out here in full.

77. Plaintiffs have properly and effectively cancelled and rescinded the loan in

accordance with the rights and procedure set out in 15 U.S.C. § 1635.

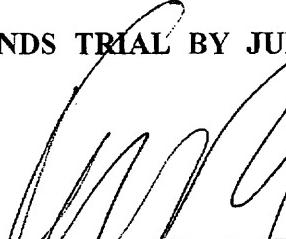
78. Defendant has violated TILA, with respect to the McCombs Loan, in at least the following ways:

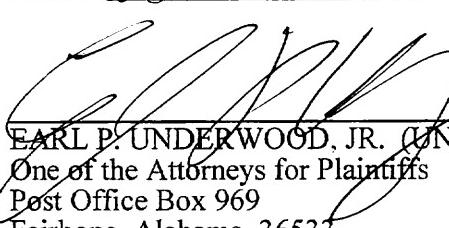
- (A) By failing to take actions after rescission as required by 15 U.S.C. § 1635(b), including the steps necessary or appropriate to reflect the termination of the security interest and returning all money paid by Plaintiffs in connection with the loan; and
- (B) By failing to give proper notice of Plaintiffs' right to cancel the transaction.

WHEREFORE, Plaintiffs Melvin and Barbara McCombs respectfully request that this Court enter judgment against AMC and in their favor, and pursuant to 15 U.S.C. § 1640(a), award the following relief:

- A) Statutory damages as provided in 15 U.S.C. § 1640(a);
- B) Actual damages in an amount to be determined at trial;
- C) Rescission of the McCombs Loan, including a declaration that Plaintiffs are not liable for any finance charges or other charges imposed;
- D) A declaration that the security interest in Plaintiffs' property created under the mortgage transaction is void, and an order requiring AMC to release such security interest;
- E) Return of any money or property given by the Plaintiffs to anyone, including the Defendants, in connection with the transaction;
- F) A declaration that Plaintiffs have no duty to tender the loan proceeds to AMC, but in the alternative, if tender is required, a determination of the amount of tender obligation in light of all of the Plaintiffs' claims, and an order requiring the AMC to accept tender on reasonable terms and over a reasonable period of time;
- G) An award of reasonable attorney fees and costs; and
- H) Such other relief at law or equity as this Court may deem just and proper.

EACH OF THE PLAINTIFFS DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.


KENNETH J. RIEMER (RIEMK8712)
One of the Attorney for Plaintiffs
P.O. Box 1206
Mobile AL 36633
Telephone: (251) 432-9212
Facsimile: (251) 433-7172
Email: kjr@alaconsumerlaw.com


EARL P. UNDERWOOD, JR. (UNDEE6591)
One of the Attorneys for Plaintiffs
Post Office Box 969
Fairhope, Alabama 36533
Telephone: (251) 990-5558
Facsimile: (251) 990-0626

DEFENDANT AMC TO BE SERVED BY CERTIFIED MAIL AS FOLLOWS:

Ameriquest Mortgage Company
c/o National Registered Agents, Inc.
150 South Perry Street
Montgomery, AL 36104